Supreme Court, U.S.
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No.

# In the Supreme Court of the United States

Chase Manhattan Bank, as Trustee of IMC Home Equity Loan, Trust 1997.5 under Pooling and Servicing Agreement dated as of September 1, 1997,

*Petitioner*,

v.

Bascom Corporation, et al.,

*Respondents*.

On Petition for a Writ of Certiorari to the Supreme Court of New Jersey

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

11 U.S.C. §362(a) provides for the automatic stay of all proceedings against a debtor upon the filing of a bankruptcy petition. 11 U.S.C. §362(b) identifies the actions that are excepted from the application of the automatic stay. 11 U.S.C. §362(d) provides procedures for parties to obtain judicial relief from the automatic stay. The questions presented are:

1. Whether a state court judgment is void when it is predicated on acts that are *void ab initio* because the acts violated the automatic stay and relief from the automatic stay has not been sought or obtained.

2. Whether a state court has authority to grant relief from the automatic stay.

3. Whether a state court has authority to create or recognize exceptions to the automatic stay if they are not specifically enumerated in 11 U.S.C. §362(b).

**Rule 14.1(b) and Rule 29.6 Disclosure**

Petitioner Chase Manhattan Bank is a party to this action in its own behalf. Petitioner is a wholly owned subsidiary of J.P.Morgan Chase & Company. J.P. Morgan Chase & Company issues stock to the public.

Respondent Bascom Corporation is a privately held corporation that does not issue stock to the public.

Fannie Askew, the original defendant, did not participate in the appeal process.

Defendant Delta Funding Corporation is a wholly owned subsidiary of Delta Financial Corporation, a company that is publicly traded on the American Stock Exchange under ticker symbol DFC. It did not participate in the trial court or in the appeal process.

There are no other parties to this proceeding.

TABLE OF CONTENTS


| | Page |
|---|---|
| Opinion below | 1 |
| Jurisdiction | 1 |
| Constitutional and Statutory Provisions Involved | 1 |
| Statement | 2 |
| Reasons for Granting the Petition | 5 |
| A. The Appellate Division Failed to Vacate A Tax Foreclosure Judgment That Was Void Because It Was Based On Acts That Violated The Automatic Stay | 8 |
| 1. The Tax Foreclosure Judgment Is Void Because It Was Based On Acts That Violated The Automatic Stay | 8 |
| 2. State Foreclosure Policy Does Not Override Federal Bankruptcy Policy | 11 |
| B. The Appellate Division Granted Relief From The Automatic Stay, A Power It Does Not Have | 14 |
| C. The Appellate Division Created An Exception To The Automatic Stay That Is Not Identified in 11 U.S.C. §362(b) | 15 |
| Conclusion | 16 |
| Appendix A – Order of the New Jersey Supreme Court denying Petitioner's Petition for Certification, dated January 21, 2004 | 1a |
| Appendix B – Opinion of the Superior Court of New Jersey, Appellate Division, dated October 14, 2003 | 3a |

TABLE OF CONTENTS–Continued: Page

Appendix C – Order of the Superior Court of New Jersey, Appellate Division denying Petitioner's Motion to Reconsider, dated November 3, 2003..... 13a
Appendix D – Order of the Superior Court of New Jersey, Chancery Division granting Motion to Vacate Sheriff's Sale, dated November 22, 2002..... 14a
Appendix E – Opinion transcript of the Superior Court of New Jersey, Chancery Division, dated November 22, 2002..... 16a
Appendix F – Text of 11 U.S.C. §362..... 30a
Appendix G – Respondent's Request to Enter Default, dated July 20, 2001..... 38a
Appendix H – Order Granting Relief from the Automatic Stay issued by the United States Bankruptcy Court for the District of New Jersey, dated September 3, 2002 in *In re: Fannie Askew*, Docket No. 02-33241DHS..... 44a
Appendix I – Docketing Statements for Fannie Askew bankruptcies..... 46a

TABLE OF AUTHORITIES

Cases:

*Acme Harvester Co. v. Beekman Lumber Co.*, 222 U.S. 300 (1911)..... 1
*In re Adams*, 106 B.R. 811 (Bankr.D.N.J.1989)..... 9, 10

Cases–Continued Page

*BFP v. Resolution Trust*, 511 U.S. 531 (1994).. 6, 12
*In re Cappadonna*, 154 B.R. 639
(Bankr. D.N.J. 1993)..... 8, 9, 10
*In re Cavanaugh*, 271 B.R. 414
(Bankr. D.Mass. 2001)..... 14
*In re Claussen*, 118 B.R. 1009
(Bankr.D.S.D. 1990)..... 11 12, 15
*Constitution Bank v. Tubbs*, 68 F.3d 685
(3rd Cir. 1995).....9, 10, 14
*In re Ford*, 188 B.R. 523
(Bankr. E.D.Pa. 1995..... 13
*In re Formisano*, 148 B.R. 217
(Bankr. D.N.J. 1992)..... 9, 10
*In re Gruntz*, 202 F.3d 1074
(9th Cir. *en banc* 2000)..... 9, 14
*In re Isley*, 104 B.R. 673 (Bankr.D.N.J. 1989)... 10
*In re Izzi*, 196 B.R. 727
(Bankr. E.D.Pa. 1996)..... 8, 10, 14
*Lesser v. Gray*, 236 U.S. 70 (1915)..... 1
*Maritime Electric Co., Inc. v. United Jersey
Bank*, 959 F.2d 1194 (3rd Cir.1992).....8, 9, 10, 14
*MSR Exploration, Ltd. v. Meridian Oil*,
74 F.3d 910 (9th Cir. 1996)..... 13
*In re Prudential Lines, Inc.*, 69 B.R. 439
(Bankr.S.D.N.Y. 1987)..... 15
*In re Raboin*, 135 B.R. 682
(Bankr.D.Kan. 1991)..... 13
*In re Rainwater*, 233 B.R. 126
(Bankr.N.D.Ala. 1999)..... 13
*In re Saunders*, 105 B.R. 781 (E.D.Pa. 1989)..... 13
*In re Sermersheim*, 97 B.R. 885
(Bankr.N.D.Ohio 1989)..... 13
*In re Siciliano*, 13 F.3d 748 (3rd Cir.1994)..... 9

Statutes, Rules, Regulations, Treatises Page

11 U.S.C. §362.....9, 11, 12
11 U.S.C. §362(a).....5, 9, 15
11 U.S.C. §362(b)..... 15
11 U.S.C. §362(c)..... 9
11 U.S.C. §362(d).....9, 14, 15
11 U.S.C. §362(h)..... 14
12 U.S.C. §1257(a)..... 1
N.J.S.A. 54:5-19..... 3
New Jersey Rule of Court 4: 6-1(a)..... 4
Collier, Bankruptcy Code – 2003 Pamphlet Edition,
*Legislative History* 11 U.S.C. §362..... 11, 12

## PETITION FOR A WRIT OF CERTIORARI

Petitioner, Chase Manhattan Bank, as Trustee, respectfully petitions for a writ of certiorari to the Supreme Court of New Jersey, which denied discretionary review on a Petition for Certification, to review the judgment of the Superior Court of New Jersey, Appellate Division in this case.

## OPINION BELOW

The opinion of the Appellate Division of the Superior Court of New Jersey (the "Appellate Division") (App., *infra*, 3a-12a) is reported at 363 N.J. Super. 334, 832 A.2d 956 (App. Div. 2003). The Appellate Division Order denying reconsideration (App., *infra*, 13a-14a) is unreported. The Order of the New Jersey Supreme Court denying Certification without opinion (App., *infra*, 1a–2a) is reported at 178 N.J. 453, 841 A.2d 91 (2004).

## JURISDICTION

The judgment opinion of the Appellate Division was entered on October 14, 2003, (App., *infra*, 3a) and reconsideration was denied on November 3, 2003 (App., *infra*, 13a). The New Jersey Supreme Court denied Petitioner's Petition for Certification on January 21, 2004. (App., *infra*, 1a). This Courts' jurisdiction is invoked under 28 U.S.C. §1257(a). *See, e.g., Lesser v. Gray*, 236 U.S. 70 (1915); *Acme Harvester Co. v. Beekman Lumber Co.*, 222 U.S. 300 (1911).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The full text of 11 U.S.C. §362 is set forth in the Appendix (App., *infra*, 30-37a).

## STATEMENT

Federal authority makes clear that acts taken in state court proceedings in violation of the automatic stay are *void ab initio*. (App., *infra*, 10a-11a). Federal authority also makes clear that a judgment based on predicate acts that are *void ab initio* is also void. Petitioner made this argument in the trial court (App., *infra*, 20a(line 8) - 21a(line 21) and the Appellate Division (App., *infra*, 7a). Both courts disagreed.

The primary issue raised by this petition is whether a state court can avoid the automatic stay, an essential component of bankruptcy law, if the state court determines that the protections of the stay conflicts with state policy. The Appellate Division held that state policy did override the protections of the automatic stay, writing

> [S]ince foreclosure law is a matter uniquely within the state's competence, the state is free to make its own determination as to the effect of a void interlocutory order irrespective of the reason it is void [and even if it is *void ab initio* for violating the automatic stay] (App., *infra*, 11a).

Thus, the Appellate Division ruled that a judgment was not itself void even though it was predicated on acts that were *void ab initio* for violating the automatic stay. This ruling conflicts with federal court rulings and, if allowed to stand, will undermine the protections and policies of bankruptcy law.

Petitioner is the holder of a first mortgage in the amount of $90,400.00 on property owned by Fannie Askew, 129 North Fifth Street, Paterson, New Jersey (the "Property"). Fannie Askew failed to make regular monthly mortgage payments

and Petitioner commenced a foreclosure action on June 22, 2000, obtaining final judgment in foreclosure on December 18, 2000. (*See generally*, App., *infra*, 5a)

In May 2001, Respondent initiated a tax foreclosure action to foreclose a $35.00 water and sewer lien[1] (*see* App., *infra*, 4a). On May 16, 2001 Petitioner was served with Respondent's complaint. (App., *infra*, 42a-43a). On June 14, 2001, Fannie Askew was served with the complaint (App., *infra*, 41a), and, on July 16, 2001, she filed a Chapter 13 Bankruptcy, Number 01-38147 (DHS)(App., *infra*, 46a). This bankruptcy lasted from July 16, 2001 until September 6, 2001 (App., *infra*, 47a). As a result of the protections afforded her by the automatic stay, 11 U.S.C. §362(a), Petitioner cancelled a sheriff's sale that was scheduled for July 17, 2001 (App. *infra*, 5a).

Notwithstanding the bankruptcy filing, Respondent pursued its tax foreclosure action. It did not seek or obtain relief from the automatic stay from the bankruptcy court (App., *infra*, 6a-7a). (Respondent has consistently taken the position that the automatic stay does not apply to it.) The Appellate Division incorrectly asserts that the entry of the Order Setting Time, Date and Place of Redemption (the "OST") was the only action taken during the first bankruptcy and the only action that violated the automatic stay (App., *infra*, 11a). Actually, Respondent took several actions during the bankruptcy.

Most notably, Respondent took the following actions during the effective period of the stay, July 17, 2001 - September 6, 2001: (1) on July 26, 2001, at Respondent's request, defaults were entered against Petitioner and Fannie Askew for failing

[1] In New Jersey, unpaid taxes can be collected by selling them to private individuals or entities. The purchasers may then foreclose the unpaid taxes. N.J.S.A. 54: 5-19, *et seq.*

to answer the complaint (App., *infra*, 37a-39a); (2) Respondent applied for the OST (App., *infra,* 4a); and, (3) on September 4, 2001, the OST was entered by the New Jersey Superior Court (App., *infra*, 4a). Two days later, on September 6, 2001, the Bankruptcy Court dismissed Fannie Askew's bankruptcy. (App., *infra*, 6a) Respondent served the OST on the same date (see App., *infra*, 6a).[2] On October 31, 2001, final judgment on the tax foreclosure action was entered for Respondent, foreclosing Petitioner's mortgage and right to redeem the taxes (App. *infra*, 4a).

Fannie Askew subsequently filed two more bankruptcies. On November 19, 2001, she filed her second Chapter 13 Bankruptcy, Number 01-42674 (DHS). This case was dismissed on January 11, 2002. (App., *infra*, 48a-49a) On March 25, 2002, Respondent Askew filed her third Chapter 13 Bankruptcy, Number 02-33241 (DHS). It was dismissed on October 28, 2002 (App., *infra,* 50a-52a).

During the third bankruptcy, on July 25, 2002, Petitioner filed a motion for relief from the automatic stay; the relief motion was granted on September 3, 2002. (App., *infra*, 52a) A sheriff's sale on Petitioner's foreclosure judgment was then held on October 22, 2002 (App., *infra*, 5a). (Petitioner was unaware of Respondent's tax foreclosure judgment at this time; it has never been established when Respondent learned of the first bankruptcy.) Thereafter, Fannie Askew filed a motion in Petitioner's foreclosure action to *Vacate Sheriff Sale Since Property Was Sold Once (*App., *infra*, 5a-6a). Petitioner, having just learned of the tax foreclosure

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[2]Fannie Askew had 35 days to answer the complaint under New Jersey law. New Jersey Rules of Court, R. 4: 6-1(a). She was served on June 14, 2001 (App., *infra*, 41a) and filed bankruptcy 32 days later, on July 16, 2001 (App., *infra*, 46a). Thus, she had three days remaining to answer when her bankruptcy was dismissed on September 6, 2001, the same day the OST was served. Of course, a default against her had already been entered.

judgment, filed a motion to *Vacate Final Judgment in Respondent's tax foreclosure action* (App., *infra*, 6a).

The trial court denied Petitioner's motion to vacate Respondent's final judgment on the tax foreclosure, and granted Fannie Askew's motion to vacate the sheriff's sale. (App., *infra,* 6a). It is the Appellate Division opinion affirming these Orders (App., *infra*, 3a-12a) for which a Petitioner seeks a Writ for Certiorari. [3]

## REASONS FOR GRANTING THE PETITION

The issues presented by this petition concern the preservation of the protections given to debtors and creditors by the automatic stay of 11 U.S.C. §362(a). Specifically, this petition places before the Court the question whether actions that are wholly void for violating the automatic stay can be given effect by state courts in state court proceedings. The petition also place before the Court the issues of whether state courts can avoid the effect of the automatic stay, grant relief from the automatic stay, or create exceptions to the automatic stay that are not identified in the bankruptcy code.

In this case, the Appellate Division recognized that at least one action taken by Respondent in its tax foreclosure action violated the automatic stay and was void. (It did not address the fact that defaults were entered during the bankruptcy.) That action – entry of the OST – was an essential step to obtaining the tax foreclosure judgment and the judgment would not have issued without it (App., *infra*, 10a-12a). Similarly, defaults had to be entered against Petitioner and Fannie Askew in order for the judgment to issue.

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[3] A companion petition has also been filed in *Chase Manhattan Bank v. Askew*, and is filed on the same date as this petition.

The Appellate Division acknowledged that the entry of the OST was an essential step and that it was void, but it still affirmed the tax foreclosure judgment. First, because the void act provided notice to Petitioner and Fannie Askew that the tax foreclosure action was proceeding. Second, because the judgment itself was entered only after the bankruptcy was dismissed and the stay was no longer in effect. (App., *infra*, 11a). According to the Appellate Division, these two facts made the tax foreclosure judgment legally acceptable under the state law (App., *infra*, 11a).

The Appellate Division gave effect to the void OST by avoiding bankruptcy law and policies completely. Instead, it declared that foreclosure was a unique state issue that overrides any federal interest in enforcing the automatic stay. It did not matter that the automatic stay makes *void ab initio* any act taken in violation of the stay.[4] Rather,

> since foreclosure law is a matter uniquely within the state's competence, the state is free to make its own determination as to the effect of the entry of a void interlocutory order, irrespective of the reason it is void (App., *infra*, 11a).

Thus, the Appellate Division ruled – incorrectly – that it could reinstate an action that was *void ab initio* for violating the automatic stay (App., *infra*, 11a).

The decision to reinstate the void OST does not have any legal support and is contrary to long established authority. The reinstatement also ignores a plethora of federal authority

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[4]In fact, the case relied on by the Appellate Division, *BFP v. Resolution Trust*, 511 U.S. 531 (1994), did not involve the automatic stay. The case actually supports the position that state interests in foreclosure ***do not*** override federal interests in bankruptcy and the automatic stay.

that these type acts are *void ab initio* and remain so unless and until retroactive relief from the automatic stay is obtained from the bankruptcy court. The decision also disregards fundamental policies underlying bankruptcy law, as well as one of the essential purposes of the automatic stay – ensuring that one creditor does not obtain an unfair advantage over another creditor when a debtor files bankruptcy.

The Appellate Division also exercised powers that it does not have. By reinstating actions that were void for violating federal bankruptcy law, the Appellate Division effectively granted retroactive relief from the automatic stay, even though that power is reserved to the federal courts. The only other possible rationale for the decision is to find that the Appellate Division created an exception to the automatic stay that is not identified in 11 U.S.C. § 362(b). Again, that is a power beyond the Appellate Division because exceptions to the automatic stay are narrowly construed. Ultimately, no matter how the decision is interpreted, the Appellate Division exceeded its power and authority by reinstating the void act.

This Court should grant a writ of certiorari to reconcile the conflict in interpretation of the bankruptcy code created by the Appellate Division's decision. This Court should also grant the writ of certiorari to rectify the plain errors in the Appellate Division's interpretation and application of federal bankruptcy law, as well as to preserve federal primacy in the bankruptcy realm. Finally, the Court should grant the writ of certiorari to preserve the fundamental polices underlying bankruptcy law and the mechanisms by which those policies are to be implemented and protected.

## A. THE APPELLATE DIVISION FAILED TO VACATE A TAX FORECLOSURE JUDGMENT THAT WAS VOID BECAUSE IT WAS BASED ON ACTS THAT VIOLATED THE AUTOMATIC STAY

### 1. THE TAX FORELCOSURE JUDGMENT IS VOID BECAUSE IT WAS BASED ON ACTS THAT VIOLATED THE AUTOMATIC STAY

Bankruptcy law is clear. The tax foreclosure judgment is void because two of its essential acts were *void ab initio*, the entry of default for failing to answer the complaint and the entry of the OST. These actions were taken during the effective period of the automatic stay and, while the Appellate Division acknowledged that the OST was *void ab initio*, it did not address the entry of default. It did, however, affirm the judgment, holding that: (1) the judgment itself was not void because the effect of the void OST could be reinstated; and, (2) because the judgment was entered after the bankruptcy was dismissed and the stay was no longer in effect. These conclusions, and thus the decision, are wrong.

Actions that violate the automatic stay are *void ab initio* and a judgment that relies on those actions is also *void ab initio*. *See, e.g., Maritime Electric Company, Inc. v. United Jersey Bank*, 959 F.2d 1194, 1207-1209 (3rd Cir.1992)(a trial conducted in violation of the automatic stay cannot support a judgment); *In re Izzi*, 196 B.R. 727, 729 (Bankr. E.D.Pa. 1996)(a complaint filed in violation of the stay rendered all subsequent proceedings void, including those conducted when the stay was not in effect); *In Re Cappadonna*, 154 B.R. 639, 641-642 (Bankr. D.N.J. 1993)(a judgment that is void because it was entered in violation of the stay cannot be saved by entering another judgment after the stay is no longer in effect).

The automatic stay, 11 U.S.C. §362, is automatic upon the filing of the bankruptcy, *Constitution Bank v. Tubbs*, 68 F.3d 685, 691 (3rd Cir. 1995), and it has the effect of a federal court ordered injunction, *In re Gruntz*, 202 F.3d 1074, 1082 (9th Cir. *en banc* 2000). 11 U.S.C. §362(a) provides in pertinent part that a bankruptcy petition "operates as a stay, applicable to all entities, of (1) the... continuation... of a judicial... action or proceeding against the debtor that was... commenced before the commencement of the [bankruptcy] case..." 11 U.S.C. §362(a)(1). It also stays "any act to create, perfect, or enforce any lien against property of the estate." 11 U.S.C. §362(a)(4).

The automatic stay is absolute, and all pending actions are stayed until termination of the bankruptcy case or relief from the automatic stay is obtained from the bankruptcy court. 11 U.S.C. §§362(c), (d). "Once triggered by a debtor's bankruptcy petition, the automatic stay suspends any non-bankruptcy court's authority to continue judicial proceedings then pending against the debtor. This is so because the §362 stay is mandatory and 'applicable to all entities', including state and federal courts." *Maritime Electric*, 959 at 1206.

"Once a stay is in effect, without relief from the bankruptcy court, 'the parties themselves [can]not undertake any judicial action material to... the claim against' the debtor." *Tubbs*, 68 F.3d at 692. "Absent relief from the stay, judicial actions and proceedings against the debtor are *void ab initio*." *Maritime Electric*, 959 F.2d at 1206. *See, e.g., In re Siciliano*, 13 F.3d 748(3rd Cir.1994)(same); *Cappadonna*, 154 B.R. at 641(same); *In re Adams*, 106 B.R. 811, 831 Bankr.D.N.J.1989) ("Acts violative of the automatic stay are *void ab initio.*").

"**All acts which violate [the automatic stay] are void.** *In re Formisano*, 148 B.R. 217, 224 (Bankr D.N.J. 1992)(emphasis added). "All acts" includes, but is not

limited to, trials, and the waiver of the right to trial by jury, *Maritime Electric*, 959 F.2d at 1207-1208; foreclosure sales, *Siciliano*, *supra*; motions and appeals, *Tubbs*, 68 F.3d at 692-694; tax sales, *Formisano*, 148 B.R. at 224; license suspensions, *Adams*, 106 B.R. at 831; the entry of judgment, *Cappadonna*, 154 B.R. at 639; the creation of taxes and tax liens, *In re Isley*, 104 B.R. 673 (Bankr.D.N.J. 1989); and, the filing of a complaint, *Izzi*, 196 B.R. 729.

If an act that is ostensibly valid is based on an act that it void, the "valid" act is likewise void; the ostensibly valid acts cannot be saved merely because they occurred after the bankruptcy is dismissed or the stay is no longer in effect. *E.g., Cappadonna*, 154 B.R. at 639 (a judgment that is void because it is entered during bankruptcy cannot be reinstated by re-issuing after the bankruptcy); *Izzi*, 196 B.R. at 729 (the complaint was *void ab initio* because it was filed during the pendency of a bankruptcy; all subsequent proceedings in the action were void, even those taken after the dismissal of the bankruptcy).

The judgment is void and the Appellate Division wrongly held otherwise. The tax foreclosure was designed to divest Fannie Askew and the bankruptcy estate of the Property. By the plain terms of the statute, the stay stopped the tax foreclosure. No further action should have been taken until the bankruptcy was dismissed or relief from the automatic stay was obtained.

The actions did not stop, however, and at least two crucial steps were taken in violation of the stay. Those acts are *void ab initio*. The judgment was based on these acts and it is necessarily void as well.

## 2. STATE FORECLOSURE POLICY DOES NOT OVERRIDE FEDERAL BANKRUPTCY POLICY

The policies underlying the automatic stay are clearly stated in the legislative history for 11 U.S.C. §362. The history does not support the Appellate Division's determination that state foreclosure policy outweighs federal bankruptcy policy. In fact, it shows just the opposite:

"The automatic stay is one of the fundamental debtor protections provided by bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all ***foreclosure*** actions." Collier, Bankruptcy Code – 2003 Pamphlet Edition, *Legislative History* ¶1, 11 U.S.C. §362 (emphasis added). "The automatic stay also provides creditor protection. Without it, certain creditors would be able to pursue their own remedies against the debtor's property. Those who acted first would obtain payment of the claims in preference to and to the detriment of the other creditors." *Ibid* at ¶2.

The Appellate Division gave effect to the OST by ruling that the State of New Jersey's interest in tax foreclosures superceded federal policy in bankruptcy law and in the application of the automatic stay. This assessment is inaccurate, especially when, as here, it results in one creditor obtaining an unfair advantage over another: "States by means of their own laws, can never devise preferences among creditors which federal law does not acknowledge." *In re Claussen*, 118 B.R. 1009, 1018 (Bankr.D.S.D. 1990). The Appellate Division assigned a preference to a party that chose not to abide by bankruptcy laws over a party that followed both state and federal procedures when it ruled that state foreclosure interests superceded federal bankruptcy law. This preference, based on state laws, is not allowed.

Further, the Appellate Division actually turned bankruptcy policy around. Bankruptcy is designed to assist creditors and debtors by stopping all proceedings so that the estate can by equitably distributed and to give the debtor "breathing space" and a fresh start. *E.g.*, *Claussen*, 118 B.R. at 1017. To that end, the automatic stay supercedes state foreclosure laws, state foreclosure laws do not supercede bankruptcy laws. *See* 11 U.S.C. §362(a)(1), (3). *See also* Collier, Bankruptcy Code – 2003 Pamphlet Edition, *Legislative History* ¶1, 11 U.S.C. §362 (the automatic stay "stops all collection efforts, all harassment, and all ***foreclosure*** actions."). Bankruptcy law does not encourage state foreclosure proceedings to continue when a bankruptcy is filed; it requires those proceedings to stop.

Finally, contrary to the Appellate Division's assertion, *BFP v. Resolution Trust*, 511 U.S. 531 (1994) does not support its position that state foreclosure policy trumps the policies underlying bankruptcy laws (App., *infra*, 11a). Quite the opposite. *BFP* makes clear that bankruptcy law will supercede state law related to foreclosure proceedings if the statutory purpose makes manifest an intent to displace traditional state regulation. *See id.* 511 U.S. at 544.

Federal bankruptcy law is designed to stop all proceedings against a debtor or his property once the bankruptcy petition is filed. 11 U.S.C. §362(a). Among these actions to be stopped are foreclosure proceedings designed to deprive the debtor or the estate of property or to foreclose liens. 11 U.S.C. §362(a)(1), (4). The stay is specifically designed to stop these proceedings and there are a number of sanctions to be imposed if the stay is violated. Among these is sanctions is the voiding *ab initio* of acts taken in violation of the stay. These void acts are incapable of supporting subsequent acts.

There is nothing in that statutory scheme that could lead a court to believe that the bankruptcy code was intended to leave traditional regulation of foreclosure proceedings to the states once a bankruptcy is filed. There is no rational basis for the Appellate Division's determination that state foreclosure policies override the federal policies underlying foreclosure.

Further, the statutory scheme makes clear that the automatic stay and its effect are to be administered by the bankruptcy courts, not the state courts. *Cf. MSR Exploration, Ltd. v. Meridian Oil*, 74 F.3d 910, 914 (9th Cir. 1996)("Congress has expressed its intent that bankruptcy matters be handled in a federal forum."); *In re Rainwater*, 233 B.R. 126, 147 (Bankr.N.D.Ala. 1999); ("The state courts do not possess the jurisdiction to entertain and decide upon questions and issues of federal bankruptcy law; for Congress granted the federal courts the original and exclusive jurisdiction over bankruptcy law."); *In re Ford*, 188 B.R. 523, 526 (Bankr. E.D.Pa. 1995)("The resolution of certain legal issues which arise in the course of bankruptcy cases is confined to the bankruptcy courts."); *In re Raboin*, 135 B.R. 682, 684 (Bankr.D.Kan. 1991)("[T]his court has exclusive jurisdiction to determine the extent and effect of the stay, and the state court's ruling to the contrary does not bar the debtor's present motion."); *In re Saunders*, 105 B.R. 781, 784 (E.D.Pa. 1989)( "Congress intended to establish a comprehensive enforcement mechanism for violations of the automatic stay ... within the bankruptcy code itself."); *In re Sermersheim*, 97 B.R. 885, 888 (Bankr.N.D.Ohio 1989)("It is the bankruptcy court alone that has jurisdiction to determine questions involving the automatic stay.").

To make certain that state courts were removed from the process, the bankruptcy code also contains provisions that require a party to petition the bankruptcy court for relief from

the automatic stay. *See* 11 U.S.C. §362(d). This relief must be obtained from the bankruptcy court; state courts do not have the power to grant relief from stay. *Gruntz*, 202 F.3d at 1082. *See* 11 U.S.C. §362(d).

State's rights in foreclosure do not override federal rights in bankruptcy law and the automatic stay. It is not a valid justification to support the tax foreclosure judgment.

## B. THE APPELLATE DIVISION GRANTED RELIEF FROM THE AUTOMATIC STAY, A POWER IT DOES NOT HAVE

The Appellate Division decision granted Respondent relief from the automatic stay because it relieved Respondent from the effects of its violations of the automatic stay. However, the power to grant relief from the automatic stay is reserved to the federal bankruptcy courts and cannot be exercised by state courts. *Gruntz*, 202 F.3d at 1082 ("Any state court modification of the automatic stay would constitute an unauthorized infringement upon the bankruptcy court's jurisdiction to enforce the stay."); *In re Cavanaugh*, 271 B.R. 414, 423-424 (Bankr. D.Mass. 2001); *Izzi*, 196 B.R. at 730.

There is simply no question that bankruptcy courts, and bankruptcy courts alone, have the authority to grant relief from the automatic stay. 11 U.S.C. §362(h); *Gruntz*, 202 F.3d at 1082; *Izzi*, 196 B.R. at 730. *See also Tubbs*, 68 F.3d at 691-692; *Maritime Electric*, 959 F.2d at 1206. Any attempt by a state court to authorize or exercise this power is ineffective. *See Gruntz*, 202 F.3d at 1078-1082 (and discussion contained therein).

There is also no question that the Appellate Division improperly granted relief from stay. The only way to proceed with actions that would otherwise violate the stay – like

pursuing a foreclosure action in state court – is to obtain relief from it. *See* 11 U.S.C. §362(a), (d). If the Appellate Division relieved Respondent from the effects of the automatic stay and the consequences of pursuing its foreclosure without obtaining that relief, then it granted Respondent's relief from stay. It had no authority to do so.

### C. THE APPELLATE DIVISION CREATED AN EXCEPTION TO THE AUTOMATIC STAY THAT IS NOT IDENTIFIED IN 11 U.S.C. §362(b)

The Appellate Division held that a judgment that is entered after the stay is no longer in effect is not void, even if it was based on acts that are void for violating the automatic stay. Such an exception does not exist. It is merely the creation of the Appellate Division. However, the Appellate Division does not have this power.

11 U.S.C. §362(b) identifies the exceptions to the application of the automatic stay. These exceptions are strictly and narrowly construed to not interfere with the broad scope of the automatic stay. *E.g.*, *In re Claussen*, 118 B.R. 1009, 1017 (Bankr.S.D. 1990); *In re Prudential Lines, Inc.*, 69 B.R. 439, 444 (Bankr.S.D.N.Y. 1987). There is no authority that allows a state court to expand these exceptions. In fact, the opposite is true.

There is simply no authority to support the proposition that a state court can expand exceptions identified in 11 U.S.C. §362(b) and this cannot be a basis for affirming the tax foreclosure judgment.

## CONCLUSION

WHEREFORE, Petitioner respectfully requests that this Honorable Court grant its Petition for writ of certiorari.

Respectfully submitted,

Robert A. Pinel, Esq.
Stern, Lavinthal, Frankenberg
& Norgaard, LLC
293 Eisenhower Parkway
Suite 300
Livingston, NJ 07039-1660
(973)740-0700

**APPENDIX A**

SUPREME COURT OF NEW JERSEY

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No. C-558 September Term 2003 55,462

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BASCOM CORPORATION,
Plaintiff-Respondent,
v.
FANNIE ASKEW, MR. ASKEW,
HUSBAND OF FANNIE ASKEW, et al.,
Defendants,
and
CHASE MANHATTAN BANK, AS TRUSTEE
OF IMC HOME EQUITY LOAN TRUST 1997-5
UNDER THE POOLING and SERVICING
AGREEMENT DATED AS OF SEPTEMBER 1, 1997,
Defendant-Petitioner

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CHASE MANHATTAN BANK, ETC.,
Plaintiff,
v.
FANNIE ASKEW,
Defendant.

---

[Filed: January 21, 2004]

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-2485/3332-02 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied with costs.

WITNESS, the Honorable Deborah T. Poritz, Chief Justice, at Trenton, this 20th day of January, 2004.

/s/ Stephen W. Townsend
CLERK OF THE SUPREME
COURT OF NEW JERSEY

**APPENDIX B**

Superior Court of New Jersey, Appellate Division

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NOS. A-2485-02, A-3332-02

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BASCOM CORPORATION,
Plaintiff-Respondent,
v.
CHASE MANHATTAN BANK, as Trustee of IMC Home Equity Loan Trust 1997-5 under the Pooling and Servicing Agreement dated as of September 1, 1997,
Defendant-Appellant,
and
Fannie Askew, Mr. Askew, husband of Fannie Askew, and Delta Funding Corporation,
Defendants.

---

Chase Manhattan Bank, as Trustee,
Plaintiff-Appellant,
v.
Fannie Askew,
Defendant-Respondent.

---

[Filed: October 14, 2003]

Before Judges PRESSLER, CIANCIA and COLEMAN.
The opinion of the court was delivered by
PRESSLER, P.J.A.D.

These appeals, which arise out of the same series of transactions and which we consolidate for purposes of this opinion, have their genesis in a mortgage foreclosure proceeding brought by Chase Manhattan Bank (Chase) to foreclose the mortgage it had granted Fannie Askew on property owned by her in Paterson and in a tax foreclosure proceeding brought by Bascom Corporation to foreclose a tax sale certificate it held on the same property. The appeal under Docket No. A-2485-02T5 arises out of the tax foreclosure proceeding. Chase, a defendant in that action, appeals from an order of the Chancery Division denying its motion pursuant to *R.* 4:50-1 whereby it sought to have the tax foreclosure judgment set aside on the ground of voidness by reason of asserted violation of the bankruptcy automatic stay. The appeal under Docket No. A-3332-02T5 arises out of the mortgage foreclosure proceeding. Chase, the plaintiff in that action, appeals from an order of the Chancery Division entered on Askew's motion enjoining it from proceeding to sheriff's sale of the property because its interest therein had already been foreclosed. We affirm both orders appealed from.

The complaint in the tax foreclosure action was filed in May 2001 after Askew's failure to respond to Bascom's pre-action notice served and filed in compliance with N.J.S.A. 54:5-97. Chase was joined as the first mortgagee. [FN1] Both Chase and Askew were properly served. Neither answered, and the action proceeded entirely uncontested. Bascom obtained an order entered on September 4, 2001, duly served upon both Askew and Chase, fixing the amount, time and place of redemption. *See* N.J.S.A. 54:5-98. Neither responded or made any attempt to redeem. The final judgment foreclosing Askew and Chase from all right and equity of redemption and vesting title in fee simple in Bascom was entered on

October 24, 2001. Thereafter the property was sold to Bascom at a sheriff's sale. It appears that at least as of the date of the entry of the orders under appeal Bascom had not yet resold the property.

> FN1. Chase was joined as Trustee of IMC Home Equity Loan Trust 1997-5 under the Pooling and Servicing Agreement dated September 1, 1997. IMC Home Equity was the assignee of the original Askew mortgage and assigned by it to Chase under the Pooling Agreement. For convenience Chase is referred to as the mortgagee.

We turn now to the mortgage foreclosure action. Chase commenced its foreclosure action in June 2000. Final judgment of foreclosure was entered in December 2000. Chase did not immediately proceed to sheriff's sale because of Askew's intervening petition in bankruptcy. In the meantime, Bascom, in February 2001, purchased from the City of Paterson the tax sale certificate which was the subject of its foreclosure action. It further appears that in preparation for its mortgage foreclosure sale, Chase had ordered a title search and that its searcher missed Bascom's purchase of the tax sale certificate. Accordingly Chase's title company issued an indemnification to Chase in May 2001 which made no reference to it. Chase made no attempt to enforce its foreclosure judgment against Askew until October 2002, a year after Bascom's final judgment of foreclosure. A sheriff's sale was held on October 22, 2002, at which Chase was the highest bidder.

The proceedings now under review followed. Askew filed a pro se motion in the mortgage foreclosure action seeking to set aside Chase's sheriff's sale on the ground

that the property had already been sold. Chase then filed a motion in the tax foreclosure action seeking to set aside the tax foreclosure judgment under *R.* 4:50-1. The two motions were heard together by the Chancery Division, which granted Askew's and denied Chase's. We point out that if Chase's motion was properly denied, then patently Askew's motion was properly granted since the tax foreclosure judgment foreclosed Chase's interest in the property and its effect, as the Chancery judge concluded, was to require vacation of the mortgage foreclosure judgment.

The issue thus before us is whether the Chancery Division properly denied relief to Chase pursuant to *R.* 4:50-1. The basis of Chase's assertion of a right to relief is its claim that the tax foreclosure judgment was void because the order setting the amount, time and place of redemption had been entered during the period of a bankruptcy court automatic stay. 11 U.S.C.A. § 362(a). It is, indeed, undisputed that Askew's response to the tax foreclosure proceeding was the filing for protection under Chapter 13 of the Bankruptcy Code on July 16, 2001, a month after she was served with the tax foreclosure complaint. Although she noticed Chase, she did not notice Bascom who remained unaware of the bankruptcy proceeding. In any event, the automatic stay was in effect from that filing date until Askew's petition was dismissed on October 6, 2001, two days after entry of the order fixing the terms of redemption. Askew had, in fact, filed two subsequent petitions in bankruptcy, one on November 19, 2001, which was dismissed on January 11, 2002, and the next on March 25, 2002, which was dismissed on October 31, 2002. As noted, however, the final judgment of tax foreclosure was entered on October 24, 2001, after dismissal of the first petition and prior to filing of the second. There was consequently no impediment in terms

of the automatic stay to the entry of a valid final judgment of foreclosure.

Chase argues that because the order fixing the terms of redemption violated the automatic stay, the final judgment was void, entitling it to relief pursuant to *R.* 4:50-1(d), which authorizes the court to grant relief from a void judgment. In addressing Chase's argument, the court was of the view that it did not need to consider the effect of a violation, if any, of the bankruptcy automatic stay but rather that Chase should seek any remedy to which it might be entitled by reason thereof in the bankruptcy court. [FN2] Rather, the court viewed the matter before it as implicating questions of state law only and concluded that Chase was not entitled to relief under the court rule because of its failure to seek relief within a reasonable time. The court stated its reasons for so concluding as follows:

> FN2. We note that it is not only Chase which might have a remedy in the bankruptcy court. Bascom as well was free to seek from the bankruptcy court an annulment of the automatic stay if such is deemed necessary. *See* 11 U.S.C.A. § 362(d).

> 4:50-1 and 2 permits a motion to be filed for relief from a judgment but that motion has to be filed within a reasonable time. I find that this motion was not filed within a reasonable period of time. It was filed by a party that was properly served with the complaint, that defaulted, that did absolutely nothing to defend itself and did absolutely nothing to bring to Bascom's attention the

pendency of any bankruptcy action and did not file this motion until more than a year had passed after Bascom received its final judgment in foreclosure.

There has been absolutely no showing in this matter of any excusable neglect by Chase. It has been admitted that Chase received the summons and complaint in Bascom's tax foreclosure action and no evidence has been placed before me at all to explain why Chase did not defend itself in the tax foreclosure action. I find, therefore, that the conclusion is simply unavoidable, that Chase simply sat on its rights during Bascom's tax foreclosure action and withheld the bankruptcy issue during the entire course of that tax foreclosure case.

I also find that in that connection, that Bascom properly served Chase with the order setting amount, time and place of redemption and, therefore, they had knowledge of that application. And if they wanted to raise the defense of the bankruptcy stay at that time, they could have certainly raised that defense during the course of Bascom's tax foreclosure action.

Rather, as I said, rather than doing any of that, for whatever reason, Chase sat back and let Bascom obtain a judgment without alerting them to the bankruptcy action of which Bascom had no notice but which

> Chase was fully knowledgeable about. For those reasons, I conclude that Chase has unclean hands in this matter and has not shown grounds for relief under 4:50-1.
>
> Neglect and failure to act sooner are inexcusable on this record. Further, it has failed to show any grounds why it meets the standards for moving to vacate the tax foreclosure judgment under the applicable statute which is N.J.S.A. 54:5-87.

[11/22/02 Transcript, pgs. 15-17]

The record amply supports the judge's conclusions. We note that although a claim of voidness of the judgment under section (d) of *R.* 4:50-1 is not subject to the one-year limitation applicable to sections (a), (b), and (c) imposed by *R.* 4:50-2, that rule nevertheless requires all motions under *R.* 4:50-1 to be brought within a reasonable time. Since our decision in Garza v. Paone, 44 N.J.Super. 553, 556-560, 131 A.2d 32 (App.Div.1957), our courts have uniformly held that the reasonable-time requirement applies to judgments alleged to be void because of a failure of in personam jurisdiction. *See, e.g.,* Citibank, N.A. v. Russo, 334 N.J.Super. 346, 352, 759 A.2d 865 (App.Div.2000); Wohlegmuth v. 560 Ocean Club, 302 N.J.Super. 306, 312, 695 A.2d 345 (App.Div.1997); Berger v. Paterson Veterans Taxi Serv., 244 N.J.Super. 200, 204, 581 A.2d 1344 (App.Div.1990); Last v. Audubon Park Assoc., 227 N.J.Super. 602, 606-607, 548 A.2d 236 (App.Div.1988), *certif. denied,* 114 N.J. 491, 555 A.2d 613 (1989). We point out, however, that lack of personal jurisdiction is a waivable defense. *See, e.g.,* Hupp v. Accessory Distrib., Inc., 193 N.J.Super. 701, 711, 475 A.2d

679 (App.Div.1984). There is thus a conceptual symmetry in a rule which limits a challenge to a judgment on that ground to a reasonable time thereafter. That is to say, just as the defense to the action itself may be waived, so may the right to attack an ensuing judgment on that ground be deemed waived if not exercised within a reasonable time.

The difficulty here is that we are not dealing with a waivable defect, and hence the trial court should not, in our view, have declined to consider the consequence of the asserted defect. In our view, determination of the effect of the asserted violation was necessary to the ultimate decision. We decide that issue now on the basis of the undisputed record.

A state court judgment entered while the automatic stay is in place renders that judgment void ab initio, *see, e.g.*, Cho Hung Bank v. Ki Sung Kim, et al., 361 N.J.Super. 331, 339, 825 A.2d 566 (App.Div.2003), subject, however, to retroactive annulment by the bankruptcy court under 11 U.S.C.A. § 362(d). *See* In re Siciliano, 13 F.3d 748 (3d Cir.1994). Unless cured by annulment, the defect in the judgment is not waivable because it goes to the authority of the court to render the final judgment and is consequently more nearly akin to a non-waivable lack of subject matter jurisdiction. *See, e.g.*, Macysyn v. Hensler, 329 N.J.Super. 476, 481, 748 A.2d 591 (App.Div.2000). Our courts have not yet spoken directly to a non-waivable defect in the context of time constraints on a motion for relief brought pursuant to *R.* 4:50-1(d). It is, however, evident that if the final tax foreclosure judgment here had been entered while the automatic stay was in effect, the judgment would have been void ab initio and the issue of reasonable-time prerequisite for the attack under *R.* 4:50-1(d) would have been far from clear.

The point here, however, is that the final judgment of tax foreclosure was entered after the Chapter 13 petition was dismissed, and there was then no stay in effect. Consequently, it is not the final judgment that was void. What was void was the order fixing the terms of redemption, the only action in the proceeding that occurred while the stay was in effect. Hence, as we view the issue, the question is not whether the final judgment is void ab initio but rather whether a void interlocutory order, as a matter of federal bankruptcy law, automatically vitiates the final judgment as well. We conclude that it does not. We do not believe that federal law is offended when the final judgment itself is free of the impediment of the automatic stay. Tax foreclosure law, affecting as it does, the security of title to real estate involves "an essential state interest" and "the power to ensure that security 'inheres in the very nature of [state] government.' " BFP v. Resolution Trust, 511 U.S. 531, 544, 114 S.Ct. 1757, 1764-1765, 128 L.Ed.2d 556, 558 (1994). In our view, therefore, since foreclosure law is a matter uniquely within the state's competence, the state is free to make its own determination as to the effect of the entry of a void interlocutory order irrespective of the reason it is void.

As a matter of state law, we recognize that the order fixing the terms of redemption is a necessary step in the processing of a tax foreclosure action. But we think it plain that the function of the order was entirely fulfilled. Both the property owner and the mortgagee were appropriately, accurately, and fully apprised of the amount, time and place for redemption. Both chose to ignore the information. Neither has ever asserted that the reason for so choosing was a belief in or reliance on the voidness of the order. Chase's decision to ignore the order fixing the terms of redemption was, rather, in keeping with its overarching

decision to ignore the entire tax foreclosure proceeding for whatever reason it may have had. In sum, we are persuaded that in the circumstances here the validity of the final judgment was in no way impaired by the voidness, under federal bankruptcy law, of the interlocutory order. Accordingly plaintiff's attack under *R.* 4:50-1(d) fails. Beyond that and for the reasons expressed by the trial judge, we are satisfied that plaintiff is not entitled to relief under any other section of *R.* 4:50-1.

The order appealed from in each of the two appeals is affirmed.

**APPENDIX C**

Superior Court of New Jersey, Appellate Division

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NO. A-2485-02

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CHASE MANHATTAN BANK, as Trustee of
IMC Home Equity Loan Trust 1997-5 under the Pooling
and Servicing Agreement dated as of September 1, 1997,
Defendant-Appellant,
v.
BASCOM CORPORATION,
Plaintiff-Respondent,
and
Fannie Askew, Mr. Askew, husband of Fannie Askew,
and Delta Funding Corporation,
Defendants.

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[Filed: November 3, 2003]

Before Judges PRESSLER, CIANCIA and COLEMAN.

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 31 DAY OF OCTOBER, 2003, HEREBY ORDERED AS FOLLOWS: Appellant's motion for Reconsideration is DENIED.

FOR THE COURT

/s/
SYLVIA B. PRESSLER P.J.A.D

## APPENDIX D

Superior Court of New Jersey, Chancery Division
Passaic County

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DOCKET NO. F-8959-01

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BASCOM CORPORATION
Plaintiff,
v.
Fannie Askew, et al.
Defendant.

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[Filed: November 22, 2002]

## ORDER STAYING SHERIFF'S EVICTION

This matter having been opened to the Court on the Motion of Farr, Burke, Gambacorta & Wright, a Professional Corporation, attorneys for Chase Manhattan Bank as Trustee Under the IMC Home Equity Loan Trust, for an order vacating the final judgment entered by the Court on October 31, 2001; and the Court having read and considered the papers submitted herewith and having heard and considered the oral arguments of counsel, if any; and for good cause shown, and for the for the reasons stated on the record on 11/22/02;

IT IS, on this 22nd day of November, 2002, ORDERED that:

1. Plaintiff's motion to vacate final judgment entered on October 31, 2001 is hereby DENIED

2. In accordance with R.1:5-1, a copy of the within order shall be served on all parties or their counsel within seven (7) days of the date hereof; and

3. The pending Sheriff's Eviction is adjourned to 1/3/03 conditioned on Ms. Askew allowing plaintiff to show the property to potential buyers. The Writ of Possession is extended to 3/1/03.

/s/_____
Susan Reisner, P.J. Ch.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, EQUITY PART
PASSAIC COUNTY
DOCKET NO. F-10428-00
APP. DIV. NO. A-

CHASE MANHATTAN BANK, as Trustee,

Plaintiff,

vs. TRANSCRIPT OF MOTIONS

FANNIE ASKEW,

Defendant.

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DOCKET NO. F-8959-01

BASCOM CORPORATION,

Plaintiff,

vs.

FANNIE ASKEW,

Defendant.

---

Place: Passaic County Courthouse
77 Hamilton Street
Paterson, New Jersey 07505

Date: Friday, November 22, 2002

BEFORE:

HONORABLE SUSAN L. REISNER, P.J.Ch.

TRANSCRIPT ORDERED BY:

AURA M. EGERMAN, ESQ. (Farr, Burke, Gambacorta & Wright, PC)

IRENE M. HAYES, CSR, RMR, CRR

Passaic County Courthouse
77 Hamilton Street
Paterson, New Jersey 07505

APPEARANCES:

SUSAN B. FAGAN-LIMPERT, ESQ.
(Robert A. Del Vecchio, LLC)
Attorney for Bascom Corp.

BARI J. GAMBACORTA, ESQ. (Farr, Burke, Gambacorta & Wright, PC)
Attorney for Chase Manhattan Bank.

Fannie Askew, Pro Se.

JOSE R. SANTIAGO, ESQ., Ass't County Counsel, Passaic County
Attorney for the Sheriff's Dept.

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Colloquy 7

MR. GAMBACORTA: Well, it came to this court by a strange fashion, I think, as well. Our firm was not aware of the tax sale foreclosure until we received the papers of Miss Askew. At that point, we looked into it and determined that, in fact, there had been a tax sale foreclosure and filed two motions. One, Miss Askew's motion sought to vacate our sale since she felt that they sold the one property twice was her explanation. And second, since investigating the tax sale foreclosure, we made a determination that, in fact, it was a void sale because it violated the stay. As such, there are a number of cases that talk about the impact of a sale that is void or a judgment that is void in the state court. And certainly I believe it's important to bring it to this court's attention, particularly when we are talking about, for example, an eviction of Miss Askew on

December the 4th, that I don't believe that the court can enforce that order, that it's beyond the power of the court, based on the readings of the cases, particularly the Berger case and even the Garza case which was cited.

THE COURT: All right. I understand your argument, counsel.

MR. GAMBACORTA: Just, there are more points. Once the stay was violated, the judgment is tainted and void. It's void as to all defendants. And the case I cite is the Ward case.

And in a sense what happens is when Miss Askew filed bankruptcy, her home became a part of the estate and is protected as part of the estate. As such, creditors cannot act to improve their position as against any other creditors or take any steps which would eliminate that debtor's right to possession of the property.

That has been breached by Bascom as they have -- they did it in ignorance up until, I would say, Early November. I would point out to the court that at this point, this is certainly a wilful violation by virtue of the fact that they are pressing forward after having realized that they violated.

4:50(d) or 4:50-1(d) would permit the

vacating of a judgment, which is the application I am making. And in that situation, the one year does not apply. There's a reasonable test but the one year does not apply as do in reasonableness.

Once again, under Berger and Garza, G-a-r-z-a, the judgment is not enforceable and the lockout is not permissible.

But under the Berger court, there the court did analysis as to a voided judgment and ultimately fashioned a remedy. And I'm going to suggest to this court that that would be an ideal situation for this case.

In the Berger situation, what occurred was there was improper service, a judgment was entered. The court ultimately opened that judgment but the Statute had run in the interim. And what the court permitted was that the service was totally void, the Judgment was void but that she would permit, the Judge would permit, the plaintiff to file its action, serve the defendant appropriately so that everybody could have their day in court.

And if, in fact, this court were to permit redemption plus all reasonable expenses, then I believe that Bascom Foods would have been made whole.

As far as Miss Askew, you know, ultimately

Colloquy 10

there was a proper sheriff's sale but it's going to take 60 to 90 days to evict her which would certainly give her -- she needs additional time to find housing. And ultimately, all those taxes that have been paid by Bascom Food would be paid, in effect, by Chase as they perhaps should have done in the beginning. And that would be a remedy that I would propose.

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Colloquy 13

THE COURT: All right. Thank you, counsel. I have considered the papers and this matter

is not without its complexities. However, this is a motion to vacate a final judgment of tax foreclosure which was entered on October 31st, 2001 in favor of Bascom Corporation.The motion was not filed Chase by Manhattan Bank, which was a served defendant in this case, until November 12th, 2002, more than a year after the final judgment of tax foreclosure was entered.

The gist of Chase Manhattan's motion is that the judgment of tax foreclosure was allegedly obtained in violation of the bankruptcy laws because at the time that Chase, strike that, Bascom applied for the order setting time and amount of redemption, there was still a pending bankruptcy that had been filed by the defendant Fannie Askew.

There is no dispute that Bascom was never named as a creditor in that bankruptcy action, that Bascom had no notice of that bankruptcy action. There is also no dispute that Chase knew about the bankruptcy, was named as a creditor in the bankruptcy and certainly could have brought to the attention of Chase, strike that, of Bascom that there was a pending bankruptcy action if it believed that anything that Bascom was doing in its tax foreclosure action was improper.

So for the reasons I'm about to set forth,

I'm going to deny the motion that has been filed by Chase. I'm going deny that motion without prejudic the right of Chase to apply through the bankruptcy court, if it wishes to do so, for relief from the judgment at issue here.

My denial of the motion is based on my conclusion that Chase has unclean hands, has failed move timely to be relieved of this judgment under 4:50-1 and has also failed to move timely under the foreclosure statute, N.J.S.A. 54:5-87.

4:50-1 and 2 permits a motion to be filed for relief from a judgment but that motion has to be file within a reasonable time. I find that this motion wa not filed within a reasonable period of time. It was filed by a party that was properly served with the complaint, that defaulted, that did absolutely nothin to defend itself and did absolutely nothing to bring t Bascom's attention the pendency of any bankruptcy action and did not file this motion until more than a year had passed after Bascom received its final judgment in foreclosure.

There has been absolutely no showing in this matter of any excusable neglect by Chase. It has be admitted Chase received the summons and complair in Bascom's tax foreclosure action and no evidence l

been placed before me at all to explain why Chase did not defend itself in the tax foreclosure action. I find, therefore, that the conclusion is simply unavoidable, that Chase simply sat on its rights during Bascom's tax foreclosure action and withheld the bankruptcy issue during the entire course of that tax foreclosure case.

I also find that in that connection, that Bascom properly served Chase with the order setting amount, time and place of redemption and, therefore, they had knowledge of that application. And if they wanted to raise the defense of the bankruptcy stay at that time, they could have certainly raised that defense during the course of Bascom's tax foreclosure action.

Rather, as I said, rather than doing any of that, for whatever reason, Chase sat back and let Bascom obtain a judgment without alerting them to the bankruptcy action of which Bascom had no notice but which Chase was fully knowledgeable about. For those reasons, I conclude that Chase has unclean hands in this matter and has not shown grounds for relief under 4:50-1.

Neglect and failure to act sooner are inexcusable on this record. Further, it has failed to

show any grounds why it meets the standards for moving to vacate the tax foreclosure judgment under the applicable statute which is N.J.S.A. 54:5-87.

In the event, I want to note, that Chase should apply to the bankruptcy court for relief, I just want it to be clear that my decision is based on state law. That is, I am not making a decision under the bankruptcy laws, rather, I am deciding that, under state law, Chase did not timely file or bring to the court's attention those defenses. That is, under Rule 4:50-2, Chase did not make its motion within a reasonable time nor did Chase make its motion within the time frames required by N.J.S.A. 54:5-87. So therefore, I am ruling that Chase is barred from raising the bankruptcy laws as a defense in this case because it waited too long under state law to raise those issues.

For all of those reasons, the motion is denied.

Now, to move onto Chase vs. Askew, this is essentially a motion by Miss Askew seeking to set aside the sheriff's sale. Essentially, it's duplicative because Bascom already owns the property.

**********

THE COURT: All right.
I have considered the applications of the parties. And once again, the relationship to the parties are a little bit complicated here. But given the ruling that I have already made, I am constrained to conclude that Chase sought to have something sold by the sheriff that already belonged to Bascom and that,

therefore, the sale must be set aside. Because, through no fault of the sheriff's office, they sold something that didn't belong to the person that was instigating the sale. The property had belonged to Bascom since October of 2001. For that reason, the sheriff's sale must be vacated.

**********

# CERTIFICATION

I, IRENE M. HAYES, C.S.R., License Number XI00770, an Official Court Reporter in and for the State of New Jersey, do hereby certify the foregoing to be prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript to the best of my knowledge and ability.

/s/ 12/9/02

Irene M. Hayes, C.S.R. Date
Official Court Reporter
Passaic County Courthouse
Paterson, New Jersey

## APPENDIX F

11 U.S.C. § 362 Automatic stay

**(a)** Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of--

**(1)** the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

**(2)** the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

**(3)** any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

**(4)** any act to create, perfect, or enforce any lien against property of the estate;

**(5)** any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

**(6)** any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

**(7)** the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning the debtor.

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay--

(1) under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor;

(2) under subsection (a) of this section--

(A) of the commencement or continuation of an action or proceeding for--

(i) the establishment of paternity; or

(ii) the establishment or modification of an order for alimony, maintenance, or support; or

(B) of the collection of alimony, maintenance, or support from property that is not property of the estate;

(3) under subsection (a) of this section, of any act to perfect, or to maintain or continue the perfection of, an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) of this title or to the extent that such act is accomplished within the period provided under section 547(e)(2)(A) of this title;

(4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit or any organization exercising authority under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13, 1993, to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained

in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power;

[**(5) Repealed.** Pub.L. 105-277, Div. I, Title VI, § 603(1), Oct. 21, 1998, 112 Stat. 2681-886]

**(6)** under subsection (a) of this section, of the setoff by a commodity broker, forward contract merchant, stockbroker, financial institutions, or securities clearing agency of any mutual debt and claim under or in connection with commodity contracts, as defined in section 761 of this title, forward contracts, or securities contracts, as defined in section 741 of this title, that constitutes the setoff of a claim against the debtor for a margin payment, as defined in section 101, 741, or 761 of this title, or settlement payment, as defined in section 101 or 741 of this title, arising out of commodity contracts, forward contracts, or securities contracts against cash, securities, or other property held by or due from such commodity broker, forward contract merchant, stockbroker, financial institutions, or securities clearing agency to margin, guarantee, secure, or settle commodity contracts, forward contracts, or securities contracts;

**(7)** under subsection (a) of this section, of the setoff by a repo participant, of any mutual debt and claim under or in connection with repurchase agreements that constitutes the setoff of a claim against the debtor for a margin payment, as defined in section 741 or 761 of this title, or settlement payment, as defined in section 741 of this title, arising out of repurchase agreements against cash, securities, or other property held by or due from such repo participant to margin, guarantee, secure or settle repurchase agreements;

**(8)** under subsection (a) of this section, of the commencement of any action by the Secretary of Housing and Urban Development to foreclose a mortgage or deed of trust in any case in which the mortgage or deed of trust held

by the Secretary is insured or was formerly insured under the National Housing Act and covers property, or combinations of property, consisting of five or more living units;

(9) under subsection (a), of--

(A) an audit by a governmental unit to determine tax liability;

(B) the issuance to the debtor by a governmental unit of a notice of tax deficiency;

(C) a demand for tax returns; or

(D) the making of an assessment for any tax and issuance of a notice and demand for payment of such an assessment (but any tax lien that would otherwise attach to property of the estate by reason of such an assessment shall not take effect unless such tax is a debt of the debtor that will not be discharged in the case and such property or its proceeds are transferred out of the estate to, or
otherwise revested in, the debtor).

(10) under subsection (a) of this section, of any act by a lessor to the debtor under a lease of nonresidential real property that has terminated by the expiration of the stated term of the lease before the commencement of or during a case under this title to obtain possession of such property;

(11) under subsection (a) of this section, of the presentment of a negotiable instrument and the giving of notice of and protesting dishonor of such an instrument;

(12) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Transportation under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage, or a security interest in or relating to a vessel or vessel under construction, held by the Secretary of

Transportation under section 207 or title XI of the Merchant Marine Act, 1936, or under applicable State law;

**(13)** under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Commerce under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage in a vessel or a mortgage, deed of trust, or other security interest in a fishing facility held by the Secretary of Commerce under section 207 or title XI of the Merchant Marine Act, 1936;

**(14)** under subsection (a) of this section, of any action by an accrediting agency regarding the accreditation status of the debtor as an educational institution;

**(15)** under subsection (a) of this section, of any action by a State licensing body regarding the licensure of the debtor as an educational institution;

**(16)** under subsection (a) of this section, of any action by a guaranty agency, as defined in section 435(j) of the Higher Education Act of 1965 or the Secretary of Education regarding the eligibility of the debtor to participate in programs authorized under such Act;

**(17)** under subsection (a) of this section, of the setoff by a swap participant, of any mutual debt and claim under or in connection with any swap agreement that constitutes the setoff of a claim against the debtor for any payment due from the debtor under or in connection with any swap agreement against any payment due to the debtor from the swap participant under or in connection with any swap agreement or against cash, securities, or other property of the debtor held by or due from such swap participant to guarantee, secure or settle any swap agreement; or

**(18)** under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax imposed by the District of Columbia, or a political subdivision of a State, if such tax comes due after the filing of the petition. The provisions of paragraphs (12) and (13) of this subsection shall apply with respect to any such petition filed on or before December 31, 1989.

**(c)** Except as provided in subsections (d), (e), and (f) of this section--

**(1)** the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate; and

**(2)** the stay of any other act under subsection (a) of this section continues until the earliest of--

**(A)** the time the case is closed;

**(B)** the time the case is dismissed; or

**(C)** if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied.

**(d)** On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay--

**(1)** for cause, including the lack of adequate protection of an interest in property of such party in interest;

**(2)** with respect to a stay of an act against property under subsection (a) of this section, if--

**(A)** the debtor does not have an equity in such property; and

**(B)** such property is not necessary to an effective reorganization; or

**(3)** with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is

secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period)--

**(A)** the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or

**(B)** the debtor has commenced monthly payments to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien), which payments are in an amount equal to interest at a current fair market rate on the value of the creditor's interest in the real estate.

(e) Thirty days after a request under subsection (d) of this section for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection (d) of this section. A hearing under this subsection may be a preliminary hearing, or may be consolidated with the final hearing under subsection (d) of this section. The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (d) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing. If the hearing under this subsection is a preliminary hearing, then such final hearing shall be concluded not later than thirty days after the conclusion of such preliminary hearing, unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances.

**(f)** Upon request of a party in interest, the court, with or without a hearing, shall grant such relief from the stay provided under subsection (a) of this section as is necessary to prevent irreparable damage to the interest of an entity in property, if such interest will suffer such damage before there is an opportunity for notice and a hearing under subsection (d) or (e) of this section.

**(g)** In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section--

**(1)** the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and

**(2)** the party opposing such relief has the burden of proof on all other issues.

**(h)** An individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

# APPENDIX G

ENTERED ON ACMS

ROBERT A. DEL VECCHIO, ESQ.
405 Lafayette Avenue
P O Box 561
Hawthorne, N.J. 07507
(973) 423-9035
Attorney for Plaintiff,
BASCOM CORPORATION

FILED & FILED
SUPERIOR COURT
OF NEW JERSEY

Default has been entered as to this filed request and affidavit of default of the plaintiff.

JUL 26 2001

CLERK Clerk

E

BASCOM CORPORATION

Plaintiff,

v.

FANNIE ASKEW

Defendants.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: PASSAIC COUNTY
DOCKET NO.: F-8959-01

Civil Action

REQUEST TO ENTER DEFAULT

TO: DONALD F. PHELAN
Clerk of the Superior Court

PLEASE enter the default of the defendants Fannie Askew, Mr. Askew, husband of Fannie Askew, Delta Funding Corporation and The Chase Manhattan Bank** for failure to plead or otherwise defend as provided by the Rules of Civil Practice of this Court.

By: _____
Robert A. Del Vecchio

Dated: July 20, 2001

**As trustee of IMC Home Equity Loan Trsut 1997-5 under the Pooling and Servicing Agreement dated as of September 1, 1997

BEST AVAILABLE COPY

ROBERT A. DEL VECCHIO, ESQ.
405 Lafayette Avenue
P O Box 561
Hawthorne, N.J. 07507
(973) 423-9035
Attorney for Plaintiff,
BASCOM CORPORATION

| | |
|---|---|
| BASCOM CORPORATION<br><br>Plaintiff,<br><br>v.<br><br>FANNIE ASKEW<br><br>Defendants. | SUPERIOR COURT OF NEW JERSEY<br>CHANCERY DIVISION: PASSAIC COUNTY<br>DOCKET NO.: F-8959-01<br><br>Civil Action<br><br>CERTIFICATION IN SUPPORT OF REQUEST TO ENTER DEFAULT AND OF NON-MILITARY SERVICE |

ROBERT A. DEL VECCHIO, hereby certifies and says:

1. I am an attorney at law of the State of New Jersey and am the attorney for plaintiff. I am fully familiar with the facts set forth herein and am making this certification in support of plaintiff's application for entry of default.

2. Defendant Fannie Askew was served with a Summons and a copy of the Complaint filed herein on June 14, 2001, as indicated by the true copy of the Affidavit of Service attached hereto as Exhibit A.

3. Defendant Mr. Askew, husband of Fannie Askew was served with a Summons and a copy of the Complaint filed herein on June 14, 2001, as indicated by the true copy of the Affidavit of Service attached hereto as Exhibit B.

4. Defendant Delta Funding Corporation was served with a Summons and a copy of the Complaint filed herein on May 22, 2001, as indicated by the true copy of the Affidavit of Service attached hereto as Exhibit C.

5. Defendant Chase Manhattan Bank ** was served with a Summons and a copy of the Complaint filed herein on May 16, 2001, as indicated by the true copy of the Affidavit of Service attached hereto as Exhibit D.

6. These defendants have not answered or otherwise moved within the time prescribed by the Rule of Civil Practice of New Jersey and that the time for the defendants to answer or otherwise move has not been extended.

7. Defendants Fannie Askew and Mr. Askew, husband of Fannie Askew are not infants or incompetent persons and are not in the military service of the United States.

8. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: July 29, 2001

Robert A. Del Vecchio

** as Trustee of IMC Home Equity Loan Trsut 1997-5 under the pooling and servicing agreement dated as of September 1, 1997

SD 00 ROS # 002279-PCR CONTROL # 00 [illegible]

ASSOM CORPORATION VS FANNIE ASKEW ET ALS VS VS

STATE OF NEW JERSEY ) SS PASSAIC COUNTY ) STATE OF NJ ATTY FILE NO.: DOCKET NO.: F 8059 01

I, RONALD S. FAVA, ACTING SHERIFF OF PASSAIC COUNTY, DO HEREBY DEPUTIZE AND APPOINT THE UNDERSIGNED OFFICER TO BE MY DEPUTY, TO EXECUTE AND RETURN THE WRIT ACCORDING TO LAW RECEIVED 061401

DOCUMENTS

SUMMONS AND COMPLAINT

INDIVIDUAL
DEF: FANNIE ASKEW
01

ADDRESS: 127-131 NORTH 5TH STREET
PATERSON, NJ

PLACE OF SERVICE: (✓) usual place of abode ( ) bus./emp. ( ) bus./res. ( ) other
129 N 5TH ST

By

INDIVIDUAL

(✓) delivering a copy to him/her personally. ( ) leaving a copy with a competent member of the household of the age of 14 years or over then residing therein.

( ) Other: _____
(print name & relationship)

CORPORATION - BUSINESS - GOVERNMENT AGENCY

Serving a copy on
( ) Officer ( ) Managing Agent ( ) Registered Agent ( ) Person in charge at the registered office of the corporation ( ) Municipal Clerk ( ) Clerk of the Board ( ) Authorized Agent ( ) Secretary to the Board ( ) A competent member of the household of the age of 14 years or over residing therein. ( ) Director ( ) Other:

_____
(print name – title – relationship)

DESCRIPTION OF PERSON ACCEPTING PAPERS

Sex: Skin: Age: Eyes: Height: Weight: Hair:
Other: Military Status of Defendant: _____ Military _____ Non Military
COMMENTS: _____

UNSERVED

( ) No such street NUMBER.
( ) Defendant is unknown at address furnished by attorney.
( ) All reasonable inquiries suggest defendant moved to an undetermined address.
( ) No such STREET in municipality.
( ) Address is a complex with no directory. Bldg./Apt./Suite # required.
( ) No response on: _____; _____; _____; _____; _____
( ) Other: _____
Remarks: _____

Ronald S. Fava
Acting Sheriff

6-14-01
DATE

By [illegible] 049
SPECIAL DEPUTY SHERIFF

ROBERT A. DEL VECCHIO, ESQ
Robert A. Del Vecchio
P.O. Box 561
Hawthorne, NJ 07507

Exhibit A

****** P R O O F  O F  S E R V I C E ******  5/16/01

CHANCERY DOCKET....01-008884  DEFENDANT SEQUENCE 001 OF 001
OFFICER..... 88220  STEPHEN MILLER
TYPE OF EXECUTION.....  SUMMONS AND COMPLAINT

ATTORNEY

ROBERT A DEL VECCHIO
405 LAFAYETTE AVENUE
HAWTHORNE  NJ  07507

CHECK # 001314  AMOUNT 14.90

COURT DATA

COURT OF ISSUANCE.....  SUPERIOR COURT OF NEW JERSEY  FOLD

DOCKET..F895901  STATE.... NJ  / COUNTY OF VENUE....PASSAIC CTY

CAPTION OF CASE

CORPORATION NAME.....  BASCOM CORPORATION
VS... FANNIE ASKEW MR ASKEW H/W ET ALS

DEFENDANT OR NAMED WITHIN TO BE SERVED

CORPORATION NAME.....  DELTA FUNDING CORPROATION
ADDRESS 1.....  0000002075  MILLBURN  AVE
ADDRESS 2.....
TOWN/STATE/ZIP.....  MAPLEWOOD  NJ  07040

PAPERS SERVED

SUMMONS AND COMPLAINT
CERTIFICATION

SERVICE DATA RECORDED

SERVED SUCCESSFULLY.....[X]  UNABLE TO SERVE.....[ ]  DATE..10[5]-12[2]-19[1]

REMARKS:

OFFICER.....
MANAGING AGENT.....
REGISTERED AGENT.....
PERSON IN CHARGE AT REGISTERED OFFICE OF.....[X]
OTHER.....

PERSON SERVED.....  Jill Penna

SEX : [ ] MALE [ ] FEMALE
SKIN : [ ] WHITE [ ] BLACK [ ] YELLOW [ ] BROWN [ ] RED
HEIGHT: [ ] UNDER 5 FEET [ ] 5.0-5.6FT [ ] 5.7-6.0 [ ] OVER 6FT
WEIGHT: [ ] UNDER 100LBS [ ] 100-150LBS [ ] 151-200LBS [ ] OVER 200LBS
HAIR [ ] BLACK [ ] BROWN [ ] BLOND [ ] GRAY [ ] RED [ ] WHITE [ ] LONG
AGE [ ] 18-30 [ ] 31-50 [ ] 51-65 [ ] OVER 65

ROLANDO B. TORTUGA
ESSEX COUNTY SHERIFF
BY:

SHERIFFS: [ ] OFFICER [X] INVESTIGATOR
STATE OF NEW JERSEY

EXHIBIT C

BASCOR CORPORATION VS FANNIE ASKEW, ET ALS VS VS

STATE OF NJ
PASSAIC COUNTY SS ATTY FILE NO.: DOCKET NO.: F 6589 01

I, RONALD S. FAVA, ACTING SHERIFF OF PASSAIC COUNTY, DO HEREBY DEPUTIZE AND APPOINT THE UNDERSIGNED OFFICER TO BE MY DEPUTY TO EXECUTE AND RETURN THE WRIT ACCORDING TO LAW.
RECEIVED 051401

SUMMONS AND COMPLAINT DOCUMENTS
A GOOD CORPORATION

BUSINESS
OFFICE THE BANK OF NEW YORK, AS TRUSTEE OF IMC HOME EQUITY LOAN TRUST 1997-3
UNDER THE POOLING AND SERVICING AGREEMENT DATED AS OF SEPTEMBER 1, 1997
ADDRESS 101 LAFAYETTE AVENUE
HACKENSACK NJ

FANNIE ASKEW OR ANY OTHER OCCUPANT OF
PLACE OF SERVICE: (SAME) usual place of abode ( ) bus./emp. ( ) bus./res. ( ) other

By
( ) delivering a copy to him/her personally. ( ) leaving a copy with a competent member of the household of the age of 14 years or over then residing therein. INDIVIDUAL
( ) Other: Defendants
(print name & relationship)

Serving a copy on CORPORATION - BUSINESS - GOVERNMENT - AGENCY
( ) Officer ( ) Managing Agent ( ) Registered Agent ( ) Person in charge at the registered office of the corporation ( ) Municipal Clerk ( ) Clerk of the Board ( ) Authorized Agent
( ) Secretary to the Board ( ) A competent member of the household of the age of 14 years or over residing therein. ( ) Director ( ) Other:
(print name - title - relationship)

DESCRIPTION OF PERSON ACCEPTING PAPERS
Sex: Skin: Age: Eyes: Height: Weight: Hair:
Other: Military Status of Defendant Military Non-Military
COMMENTS:

UNSERVED
( ) No such street NUMBER.
( ) Defendant is unknown at address furnished by attorney.
( ) All reasonable inquiries suggest defendant moved to an undetermined address.
( ) No such STREET in municipality.
( ) Address is a complex with no directory. Bldg/Apt/Suite required.
( ) No response on Posting and Servicing Agreement Dated as of September 1 1997
( ) Other:
Remarks:

THIS IS A CHANCERY DIVISION CASE. SEE RULE FOR LAW DIVISION CASES
SUMMONS LAW OR CHANCERY SUPERIOR COURT AMENDED

Ronald S. Fava
Acting Sheriff
5-16-01
DATE
By
SPECIAL DEPUTY SHERIFF

JEFFREY A. DEL VECCHIO, ESQ.
DEL VECCHIO
P.O. BOX 561
HACKENSACK, NJ 07602

015 JUAN SERRANO

EXHIBIT D

# APPENDIX H

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Stern, Lavinthal, Frankenberg & Norgaard, LLC
184 Grand Avenue
Englewood, New Jersey 07631
Telephone Number (201) 871-1333
Telecopier Number (201) 871-3161
Attorneys for Secured Creditor,
**Fairbanks Capital Corporation**
By: Jae Y. Kim, Esq. (JK 4016)

FILED
JAMES J. WALDRON, CLERK
SEP 0 3 2002
U.S. BANKRUPTCY COURT
NEWARK, N.J.
BY _____ DEPUTY

In Re:

FANNIE ASKEW

Debtor(s).

Case No. 02-33241 DHS

Hearing Date:

Judge:Donald Steckroth, U.S.B.J.

ORDER VACATING AUTOMATIC STAY AND FOR PROSPECTIVE RELIEF

The relief set forth on the following pages, numbered two (2) through _____ is hereby ORDERED.

Sept 3, 2002

D Steckroth

Upon the Motion of **Fairbanks Capital Corporation** , on behalf of itself and its successors and/or assigns (hereinafter collectively "Secured Creditor" and/or Movant ), under Bankruptcy Code Section 362(d) for relief from the automatic stay as to certain real property as hereinafter set forth, and for cause shown,

**ORDERED** as follows:

1. The automatic stay of Bankruptcy Code Section 362(a) is vacated to permit the movant its successors and/or assigns to institute or resume and prosecute to conclusion one or more action(s) in the court(s) of appropriate jurisdiction to foreclose mortgage(s) held by the movant upon the following:

- Land and premises commonly known as **129 NORTH FIFTH STREET, PATERSON, New Jersey.**

2. The movant may join the debtor and any trustee appointed in this case as defendants in its foreclosure action(s) irrespective of any conversion to any other chapter of the Bankruptcy Code.

3. The debtor shall not file for relief under this or any other Chapter of Title 11 of the United States Code for a period of 180 days commencing on the date of the entry of this Order.

4. All future invocations of the automatic stay shall be null and void against Movant, its successors and/or assigns, including, but not limited to, **Fairbanks Capital Corporation** to foreclose on its interest in the debtor's real property located at the address set forth above.

The movant shall serve this Order on the debtor, any trustee and other party who entered an appearance on the motion.

# APPENDIX I

CLOSEI

U.S. Bankruptcy Court
District of New Jersey (Newark)
Bankruptcy Petition #: 01-38147-DHS

*Assigned to:* Donald H. Steckroth
Chapter 13
Voluntary
Asset

*Date Filed:* 07/16/2001
*Date Terminated:* 10/29/2001

**Fannie Askew**
129 N. 5th St.
Paterson, NJ 07522
SSN: 225-56-8886
*Debtor*

represented by **Fannie Askew**
PRO SE

**John Scura**
Chapter 13 Standing Trustee
30 Two Bridges Road, Suite 230
PO Box 10215
Fairfield, NJ 07004
(973) 227-2840
*Trustee*

| Filing Date | # | Docket Text |
|---|---|---|
| 07/16/2001 | 1 | Chapter 13 Voluntary Petition filed.[trt] (Entered: 07/16/2001) |
| 07/16/2001 | 2 | Application and Order, To Pay Filing Fee In Installments :Amount Paid: $ 60.00 . Next Installment Payment of $45.00due on 8/14/01; Installment payment of $40.00 due on9/14/01; Final payment of $40.00 due on 10/14/01. [trt] (Entered: 07/16/2001) |
| 07/16/2001 | | Installment Fee Paid, Receipt #: 234776 in the Amount of $60.00[trt] (Entered: 07/16/2001) |
| 07/16/2001 | | First Meeting of Creditors Scheduled For 1:30 8/28/01 AtSuite 1401, One Newark Center . Last Day to File Proofs OfClaim: 11/26/01 .[trt] (Entered: 07/16/2001) |
| 07/16/2001 | | Incomplete Filing. Missing Document[s]: Schedules A thruJ, Chapter 13 Plan, Chapter 13 Summary, Statement ofFinancial Affairs, Summary of Schedules. Due on 7/31/01[trt] (Entered: 07/16/2001) |
| 07/16/2001 | | Deficiency Hearing [0-0] Scheduled For 2:00 8/22/01 atCourtroom B, Newark |

EXHIBIT
I

| | | |
|---|---|---|
| | | [trt] (Entered: 07/16/2001) |
| 07/19/2001 | 3 | Courts Certificate of Mailing Re: Deficiency Hearing [0-0]Utility.[msr] (Entered: 07/19/2001) |
| 07/19/2001 | 4 | Notice and Order to Debtor and Debtor's Counsel to payTrustee per Chapter 13 Plan with Court's Certificate ofMailing.[msr] (Entered: 07/19/2001) |
| 07/19/2001 | 5 | Courts Certificate of Mailing Re: [0-0] First Meeting.[msr] (Entered: 07/19/2001) |
| 08/22/2001 | 6 | Hearing Held Re: Deficiency Hearing [0-0] Utility. [NoAppearance][dam] (Entered: 08/23/2001) |
| 09/06/2001 | 7 | Order Dismissing Case and Revoking any Discharge.[msr] (Entered: 09/07/2001) |
| 09/12/2001 | 8 | Courts Certificate of Mailing Re: [7-1] Order DismissingCase.[msr] (Entered: 09/12/2001) |
| 10/22/2001 | 9 | Trustee's Final Report and Account. [Dismissed][cag] (Entered: 10/25/2001) |
| 10/29/2001 | 10 | Final Decree.[clb] (Entered: 10/29/2001) |
| 10/29/2001 | | Case Closed.[clb] (Entered: 10/29/2001) |

| PACER Service Center | | | |
|---|---|---|---|
| Transaction Receipt | | | |
| 11/07/2002 13:53:36 | | | |
| PACER Login: | fl0008 | Client Code: | 3744-00/35449 |
| Description: | Docket Report | Case Number: | 01-38147-DHS |
| Billable Pages: | 1 | Cost: | 0.07 |

CLOSED

U.S. Bankruptcy Court
District of New Jersey (Newark)
Bankruptcy Petition #: 01-42674-DHS

*Assigned to:* Donald H. Steckroth
Chapter 13
Voluntary
Asset

*Date Filed:* 11/19/2001
*Date Terminated:* 02/21/2002

**Fannie Askew**
129 N. Fifth St.
Paterson, NJ 07522
SSN: 225-56-8886
*Debtor*

**Fannie Askew**
PRO SE
represented by

**John Scura**
Chapter 13 Standing Trustee
30 Two Bridges Road, Suite 230
PO Box 10215
Fairfield, NJ 07004
(973) 227-2840
*Trustee*

| Filing Date | # | Docket Text |
|---|---|---|
| 11/19/2001 | 1 | Chapter 13 Voluntary Petition filed.[sdm] (Entered: 11/21/2001) |
| 11/21/2001 | 2 | Application and Order, To Pay Filing Fee In Installments :Amount Paid: $ 60.00 . Next Installment Payment of $60.00due on 12/16/01; ; Final payment of $65.00 due on 1/16/02.[sdm] (Entered: 11/21/2001) |
| 11/21/2001 | | Installment Fee Paid, Receipt #: 242143 in the Amount of $60.00[sdm] (Entered: 11/21/2001) |
| 11/21/2001 | | Deficiency Hearing Re: Incomplete Filing. [0-0] missingUtility Scheduled For 2:00 12/26/01 at Courtroom B, Newark[sdm] (Entered: 11/21/2001) |
| 11/21/2001 | | Incomplete Filing. Missing Document[s]: Schedules A thruJ, Chapter 13 Plan, Chapter 13 Summary, Statement ofFinancial Affairs, Summary of Schedules. Due on 12/6/01[sdm] (Entered: 11/21/2001) |
| 11/21/2001 | | First Meeting of Creditors Scheduled For 1:30 1/8/02 AtSuite 1401, One Newark Center . Last Day to File Proofs OfClaim: 4/8/02 .[sdm] (Entered: 11/21/2001) |

EXHIBIT
J

| | | |
|---|---|---|
| 11/26/2001 | 3 | Courts Certificate of Mailing Re: Deficiency Hearing [0-0]Utility.[rah] (Entered: 11/27/2001) |
| 11/26/2001 | 4 | Courts Certificate of Mailing Re: [0-0] First Meeting.[dam] (Entered: 11/28/2001) |
| 11/26/2001 | 5 | Notice and Order to Debtor and Debtor's Counsel to payTrustee per Chapter 13 Plan with Court's Certificate ofMailing.[dam] (Entered: 11/28/2001) |
| 12/10/2001 | 6 | Notice of Appearance And Request For Service Of Notice ByStern, Lavinthal, Frankenberg for Creditor Mortgage LendersNetwork USA, Inc..[rah] (Entered: 12/11/2001) |
| 12/10/2001 | 7 | Objection By Creditor Mortgage Lenders Network USA, Inc. ToConfirmation Of Plan.[rah] (Entered: 12/11/2001) |
| 12/26/2001 | 8 | Hearing Held Re: Deficiency Hearing [0-0] Utility. [NoAppearance][dam] (Entered: 12/27/2001) |
| 01/11/2002 | 9 | Order Dismissing Case for Failure to File the NecessarySchedules.[rah] (Entered: 01/14/2002) |
| 01/17/2002 | 10 | Courts Certificate of Mailing Re: [9-1] Order DismissingCase.[rah] (Entered: 01/17/2002) |
| 02/13/2002 | 11 | Trustee's Final Report and Account. [Dismissed][cag] (Entered: 02/14/2002) |
| 02/21/2002 | 12 | Final Decree.[rah] (Entered: 02/21/2002) |
| 02/21/2002 | | Case Closed.[rah] (Entered: 02/21/2002) |

| PACER Service Center | | | |
|---|---|---|---|
| Transaction Receipt | | | |
| 11/07/2002 13:54:24 | | | |
| PACER Login: | t10008 | Client Code: | 3744-00/35449 |
| Description: | Docket Report | Case Number: | 01-42674-DHS |
| Billable Pages: | 1 | Cost: | 0.07 |

DISMISSED

U.S. Bankruptcy Court
District of New Jersey (Newark)
Bankruptcy Petition #: 02-33241-DHS

*Assigned to:* Donald H. Steckroth
Chapter 13
Voluntary
Asset

*Date Filed:* 03/25/2002

**Fannie Askew**
129 North 5th Street
Paterson, NJ 07522
SSN: 225-56-8886
*Debtor*

represented by **Fannie Askew**
PRO SE

**John Scura**
Chapter 13 Standing Trustee
30 Two Bridges Road, Suite 230
PO Box 10215
Fairfield, NJ 07004
(973) 227-2840
*Trustee*

| Filing Date | # | Docket Text |
|---|---|---|
| 03/25/2002 | 1 | Chapter 13 Voluntary Petition filed. [sdm] Additional attachment(s) added on 4/2/2002 (bh, ). (Entered: 03/26/2002) |
| 03/26/2002 | 2 | Application and Order, To Pay Filing Fee In Installments :Amount Paid: $ 65.00 . Next Installment Payment of $40.00due on 4/26/02; Installment payment of $40.00 due on5/26/02; Final payment of $40.00 due on 6/26/02. [sdm] (Entered: 03/26/2002) |
| 03/26/2002 | | Installment Fee Paid, Receipt #: 249386 in the Amount of $65.00[sdm] (Entered: 03/26/2002) |
| 03/26/2002 | | Deficiency Hearing Re: Incomplete Filing. [0-0] missingUtility Scheduled For 2:00 5/1/02 at Courtroom B, Newark[sdm] (Entered: 03/26/2002) |
| 03/26/2002 | | Incomplete Filing. Missing Document[s]: Schedules A thruJ, Chapter 13 Plan, Chapter 13 Summary, Statement ofFinancial Affairs, Summary of Schedules. Due on 4/10/02[sdm] (Entered: 03/26/2002) |
| 03/26/2002 | | First Meeting of [illegible] Scheduled For 1:30 5/14/02 AtSuite 1401, One |

EXHIBIT
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| | | Newark Center . Last Day to File Proofs OfClaim: 8/12/02 .[sdm] (Entered: 03/26/2002) |
| 04/01/2002 | 3 | BNC Certificate of Service - Meeting of Creditors. Number of notices mailed: 6 (related document(s)). (msr, ) (Entered: 04/05/2002) |
| 04/08/2002 | 6 | Notice of Appearance and Request for Service of Notice filed by Fairbanks Capital Corporation. (msr, ) (Entered: 04/16/2002) |
| 04/08/2002 | 7 | Objection to Chapter 13 Plan Filed by Stern, Lavinthal, Frankenberg & Norgaard, LLC on behalf of Fairbanks Capital Corporation. (msr, ) (Entered: 04/16/2002) |
| 04/15/2002 | 4 | Notice and Order to Pay Trustee. (msr, ) (Entered: 04/05/2002) |
| 04/15/2002 | 5 | BNC Certificate of Service - Hearing, re: Deficiency. Number of notices mailed: 2 (related document(s)). (msr, ) (Entered: 04/05/2002) |
| 05/01/2002 | 8 | Amended Schedule(s) : Summary of Schedules, Schedules A through J, Statement of Financial Affairs filed by pro se Fannie Askew. (msr, ) (Entered: 05/03/2002) |
| 05/01/2002 | 10 | Chapter 13 Plan Filed by pro se Fannie Askew. (msr, ) (Entered: 05/03/2002) |
| 05/01/2002 | | Deficiency Hearing Held, OUTCOME: No Appearance (related document(s) 1). (dam, ) (Entered: 05/02/2002) |
| 05/02/2002 | 9 | Order Respecting Amendment to Schedule(s) D,E, F Signed on 5/2/2002. (msr, ) (Entered: 05/03/2002) |
| 05/22/2002 | 11 | Chapter 13 Summary, Chapter 13 Plan Filed by pro se Fannie Askew. Confirmation hearing to be held on 9/25/2002 at 10:00 AM at DHS - Courtroom 3B, Newark. Last day to Object to Confirmation 9/16/2002. (msr, ) (Entered: 05/23/2002) |
| 05/22/2002 | | Receipt of Amendment Fee -- Fee Amount $ 20.00, Receipt Number 000253208 (related document(s)8). (msr, ) (Entered: 05/23/2002) |
| 05/25/2002 | 12 | BNC Certificate of Service - Chapter 13 Summary No. of Notices: 6. Service Date 05/25/02. (Related Doc # 11) (Admin.) (Entered: 05/26/2002) |
| 07/08/2002 | 13 | Trustee's Motion to Dismiss Case re: failed to appear at the scheduled 341a meeting and failed to make payments to the Trustee Filed by John J Scura (NA) on behalf of John Scura. Hearing scheduled for 8/28/2002 at 10:00 AM at DHS - Courtroom 3B, Newark. (Attachments: # 1 Certification # 2 Certificate of Service # 3 Proposed Order) (Scura (NA), John) (Entered: |

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| | | 07/08/2002) |
| 07/25/2002 | 14 | Motion for Prospective Relief, Motion for Relief from Stay re: 129 North 5th Street, Paterson, NJ 07522 Filed by Jae Y. Kim on behalf of Fairbanks Capital Corporation. Hearing scheduled for 8/28/2002 at 01:00 PM at DHS - Courtroom 3B, Newark. (Attachments: # 1 Certificate of Service # 2 Certification In Support# 3 Exhibit # 4 Proposed Order) (Kim, Jae) (Entered: 07/25/2002) |
| 08/02/2002 | | Receipt of Motion for Relief from Stay Filing Fee -- Fee Amount $75.00, Receipt Number 000257597 (related document(s)14). (rah, ) (Entered: 08/02/2002) |
| 08/28/2002 | | Hearing Held, OUTCOME: Dismissed (related document(s) Trustee's Motion to Dismiss Case re: failed to appear at the scheduled 341a meeting and failed to make payments to the Trustee Filed by John J Scura (NA) on behalf of John Scura 13). (dam, ) (Entered: 08/29/2002) |
| 08/28/2002 | | Hearing Held, OUTCOME: Court to decide on the papers (related document(s) Motion for Prospective Relief, Motion for Relief from Stay re: 129 North 5th Street, Paterson, NJ 07522 Filed by Jae Y. Kim on behalf of Fairbanks Capital Corporation 14). (dam, ) (Entered: 08/29/2002) |
| 09/03/2002 | 15 | Order Granting Motion for Prospective Relief and Granting Motion For Relief From Stay re: 129 North Fifth Street, Paterson, NJ. (Related Doc # 14) The following parties were served: Debtor, Debtor's Attorney, and Movant. Signed on 9/3/2002. (rah, ) (Entered: 09/04/2002) |
| 09/06/2002 | 16 | BNC Certificate of Service - Order No. of Notices: 4. Service Date 09/06/02. (Related Doc # 15) (Admin.) (Entered: 09/07/2002) |
| 10/28/2002 | 17 | Order Granting Trustee's Motion to Dismiss Case. (Related Doc # 13) The following parties were served: Debtor and Debtor's Attorney. Signed on 10/28/2002. (rah, ) (Entered: 10/29/2002) |
| 10/31/2002 | 18 | BNC Certificate of Service - Order No. of Notices: 3. Service Date 10/31/02. (Related Doc # 17) (Admin.) (Entered: 11/01/2002) |
| 10/31/2002 | 19 | BNC Certificate of Service - Order Dismissing Case. No. of Notices: 5. Service Date 10/31/02. (Related Doc # 17) (Admin.) (Entered: 11/01/2002) |

| PACER Service Center | | | |
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| Transaction Receipt | | | |
| 11/07/2002 13:54:45 | | | |
| PACER Login: | fl0008 | Client Code: | 3744-00/35449 |
| Description: | Docket Report | Case Number: | 02-33241-DHS |